

NOT FOR PUBLICATION

DEC 20 2005

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

| | | |
|-------------------------|---|-------------------------|
| DARREN J. MACK, |) | |
| |) | No. 03-56493 |
| Petitioner - Appellant, |) | |
| |) | D.C. No. CV 99-4352 DDP |
| v. |) | |
| |) | MEMORANDUM* |
| TOM L. CAREY, Warden, |) | |
| |) | |
| Respondent - Appellee. |) | |
| _____ |) | |

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Argued and Submitted December 8, 2005
Pasadena, California

Before: RYMER and WARDLAW, Circuit Judges, and REED,** Senior District
Judge.

Darren J. Mack appeals from the district court's denial of his petition for a
writ of habeas corpus. We affirm.

The trial court's formulation of the jury instruction regarding the intent

* This disposition is not appropriate for publication and may not be cited to
or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** Honorable Edward C. Reed, Jr., Senior United States District Judge for the
District of Nevada, sitting by designation.

requirement of former California Penal Code § 499b was not contrary to clearly established federal law as determined by the Supreme Court of the United States. *See Beck v. Alabama*, 447 U.S. 625, 638 n.14 (1980); *Windham v. Merkle*, 163 F.3d 1092, 1106 (1998). Therefore, under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 18 U.S.C. § 2254(d)(1), this claim cannot be ground for granting a writ of habeas corpus.

Furthermore, AEDPA limits the scope of review in a habeas case to those issues specified in the certificate of appealability (COA). *Nardi v. Stewart*, 354 F.3d 1134, 1137 (9th Cir. 2004). The additional issues Mack raises are outside the COA, and he has failed to request that we broaden the COA under the procedures set forth in Ninth Circuit Rule 22-1(e). In any event, the issues are not debatable among jurists of reason. Accordingly, we decline to certify those issues.

AFFIRMED.